

VZCZCXRO4023
OO RUEHCHI RUEHDT RUEHHM RUEHNH
DE RUEHKL #1446/01 2640915
ZNY CCCCC ZZH
O 210915Z SEP 07
FM AMEMBASSY KUALA LUMPUR
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0007
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RHHMUNA/USCINCPAC HONOLULU HI PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 001446

SIPDIS

SIPDIS

E.O. 12958: DECL: 09/21/2017
TAGS: [PGOV](#) [PREL](#) [KDEM](#) [KJUS](#) [MY](#)
SUBJECT: VIDEO OF JUDGE FIXING ROCKS MALAYSIA'S JUDICIARY

Classified By: Political Section Chief Mark D. Clark for
reasons 1.4 (b and d).

Summary

1. (C) Former Deputy Prime Minister Anwar Ibrahim rocked Malaysia's legal establishment on September 19 when he held a press conference to release an eight minute videotaped conversation purportedly showing a phone conversation between a famously corrupt Malaysian attorney and the current Chief Justice of Malaysia's Federal Court engaged in a judge fixing scheme. The Malaysian Bar Association and opposition parties called for immediate inquiries into the allegations and for the establishment of a royal judicial commission to investigate the Chief Justice. Malaysian political leaders, including current Deputy Prime Minister Najib Razak, downplayed the revelations in the press, calling into doubt the authenticity of the taped conversation. Government controlled and influenced newspapers printed but downplayed the release of the tape, often burying the article to the lesser-read center pages, and avoided printing the names of the judges and political leaders discussed in the tape. There is speculation that Anwar released the tape at this time in an effort to strengthen his appeal in a recently dismissed defamation suit against former Prime Minister Mahathir. It may also be true that the tape is intended to force the retirement of Chief Justice Ahmad Fairuz whose ordinary contract expires in October 2007. End Summary.

Anwar alleges Chief Justice involved in "judge fixing"

2. (U) Malaysia's judiciary came under the spotlight again on September 19 after former DPM and de facto Peoples Justice Party (PKR) leader Anwar Ibrahim released an eight-minute video clip showing senior Malaysian lawyer VK Lingam in a mobile phone conversation allegedly with current Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim fixing the appointment of "friendly" senior judges. The video supposedly filmed in 2002, was posted on the online news portal Malaysiakini and on PKR's party website. At the time the tape was allegedly recorded, Ahmad Fairuz was the Chief Judge of Malaya, in charge of all High Court judges in Peninsular Malaysia. Among the cases "discussed" by the chief justice and the senior lawyer were Anwar's appeals and the potential appointment of Ahmad Fairuz as the Chief Justice of the Federal Court-- an event which eventually took place in 2003 when he bypassed several other senior judges in line for the position. At the September 19 press conference, Anwar claimed the revelations proved that his previous appeals against his sodomy and abuse of power convictions were tainted and that he was denied a proper and fair trial.

Explosive Conversation

13. (U) In the video clip, VK Lingam is heard telling a person alleged to be Fairuz that "key players" should be nominated for judicial appointments in order to hear cases and deliver judgments accordingly. He exhorted Fairuz's loyalty and "sacrifices" and added that even former Chief Justice Tun Eusoff Chin had told him that Fairuz is "110% loyal." Lingam stressed, "We want to make sure our friends are there for the sake of the (then) PM (Mahathir) and the sake of the country. Not for our own interest, we want to make sure the country comes first."

14. (U) Also implicated in the conversation were business tycoon and former PM Mahathir crony Vincent Tan and his business partner Tengku Adnan Tengku Mansor, then minister in the PM's Department, and currently the Tourism Minister. Based on Lingam's conversation, both Tan and Adnan had apparently played an instrumental role in the appointment of judges as well to secure the honorific title of 'Tan Sri' for Ahmad Fairuz. Towards the end of the eight-minute video clip, Lingam acknowledged, "you (Fairuz) have suffered... so much you have done, for the election, Wee Choo Keong, everything. . .nobody would have done all this. . . God bless you and your family." The reference to Wee Choo Keong seems to confirm that Lingam was talking to Chief Justice Fairuz as it was Fairuz who in 1995 as an election court judge upheld an election petition contesting DAP candidate Wee's victory as a Member of Parliament in Kuala Lumpur's Bukit Bintang district. Instead of calling for fresh election, Fairuz made an unprecedented decision by dismissing Wee and naming the losing Barisan Nasional MCA candidate Dr. Lee Chong Meng the winner.

VK Lingam "Judge Fixer Extraordinaire"

KUALA LUMP 00001446 002 OF 003

15. (SBU) VK Lingam is a senior lawyer who came into the spotlight during former Chief Justice Tun Eusoff Chin's term (1994 - 2000) in office. Dubbed locally as the "judge fixer extraordinaire," Lingam was a sought after lawyer as he had the ears of the then Chief Justice and his clients won all their cases. Lingam's relationship with the former Chief Justice was so close that their families were known to go on joint holidays paid for by Lingam. There were also allegations that Lingam wrote some of the judgments for his own cases. In one example of a defamation case involving his client Vincent Tan against journalist the late MGG Pillai, it was alleged Lingam who wrote the judgment in his firm and dispatched the "floppy disc with the judgment" to the judge's chambers. He was also implicated in the Perwaja Steel Mill fiasco (a failed development project during Mahathir's era) where government appointed auditors investigating the failure of the project found exorbitant fees paid to Lingam's firm "for unsubstantiated services." However, Lingam's influence within the judiciary waned during the term of Chief Justice Dzaiddin (2000 - 2003) until Fairuz was named the Chief Justice in March 2003. Lingam represented former PM Mahathir in a defamation suit filed by Anwar Ibrahim for calling him a homosexual at a press conference in 2005. In July 2007, Judicial Commissioner Tengku Maimon Tuan Mat dismissed the suit without hearing the merits of the case and ruled that the suit was "obviously unsustainable" and "clearly an abuse of the court process." The former DPM has filed an appeal against the decision.

Reactions to the Expose

16. (U) Former DPM Anwar stated that the revelations proved his appeals against his sodomy and abuse of power convictions "were tainted" and that he was denied a proper and fair trial. He added that the "scandalous" expose, "serves to collaborate our allegations of a political conspiracy of the highest level and corruption of the highest judicial office,

seriously bringing into question the impartiality of judicial proceedings, including mine." Anwar, who was sacked as Deputy Prime Minister in 1998, spent six years in jail after he was convicted of sodomy and corruption charges. Although his sodomy conviction was later overturned, the corruption verdict was upheld. He added that the People's Justice Party will file a special appeal with the Conference of Rulers (a constitutionally formed council of Malaysia's nine sitting monarchs and four non-royal governors), to assume their "constitutional roles" and take appropriate action. The party has also lodged a report with the Anti-Corruption Agency (ACA) and the Bar Council.

¶7. (SBU) Responding to the expose, Bar Council President Ambiga Sreenevasan urged the government to establish a royal commission of inquiry to investigate the video and the judiciary. She pointed out that rumors and allegations of such machinations have been rife and therefore, "With the emergence of this video clip, the concerns expressed by various quarters in relation to the judiciary can no longer be swept aside." Echoing the Bar Council President's call, former UN Rapporteur on the Independence of Judges and Lawyers Param Cumaraswamy (who helped represent Anwar Ibrahim in his defamation suit against Mahathir) told poloffs that only an independent commission of inquiry and "nothing less" will be able to clear the tainted image of the judiciary. However, he acknowledged that the UMNO centric government does not have the "political will to investigate the shenanigans in the judiciary."

¶8. (U) Opposition leader Lim Kit Siang stated in a letter to PM Abdullah that Chief Justice Fairuz should be suspended citing constitutional provisions that allow the removal of a Federal Court judge for ethical breach. He added that he had asked the Prime Minister to appoint an Acting Chief Justice and take "concerted efforts to restore public confidence in the independence, impartiality, professionalism, and integrity of the judiciary." Human Rights NGOs have also called on the Chief Justice to resign and urged the government to conduct a judicial review of all politically connected cases including former DPM Anwar Ibrahim's cases, appointment of judges and the sacking of the former Chief Justice and two Supreme Court Judges in 1988.

A Mooted Response from GOM and Local Media

¶9. (SBU) The GOM's response to the allegation has been extremely feeble. Minister in the Prime Minister's Department Mohd Nazri Abdul Aziz, who handles the law portfolio, stated that anyone with evidence of wrongdoing involving the appointment of judges should forward it to the

KUALA LUMP 00001446 003 OF 003

proper authorities to investigate. He added he would wait for the ACA to complete its investigations before making further comments. Similarly, Attorney General Gani Patail opined, "No criminal offense appears to have been committed in the video recording" but added that he was getting further opinion on the matter and studying other information in the video clip. Current Deputy Prime Minister Najib Razak commented to the press that the "Government will first confirm the authenticity of the video before deciding on the next course of action."

¶10. (SBU) Interestingly the mainstream newspapers, all government controlled or heavily influenced, carried the story but downplayed the news by placing it far from the front page and by not naming the people mentioned in the clip. Instead the printed press chose terms like "a prominent lawyer", a "very senior judge", "a number of prominent judges", "a prominent businessman and a politician, both of whom were close to the then Prime Minister". UMNO-owned, Malay language newspapers did not publish former DPM Anwar Ibrahim's press conference September 20 but instead carried pictures of the Chief Justice breaking fast with the

King and the Prime Minister at an official function. However, in the September 21 edition although they still had pictures of the Chief Justice breaking fast with prominent UMNO politicians, the Malay papers carried a brief report on the issue, buried in the back pages of the paper. Even "The Sun", an English language newspaper considered "more independent" than the other newspapers buried the news among other reports, seemingly because Vincent Tan, who is mentioned in Lingam's conversation with Fairuz, owns the paper. Former High Court judge Visu Sinnadurai opined to poloffs that the poor response from the government and the press was because, "it was former DPM Anwar who released the video." He told poloffs that the GOM will naturally maintain a distance when any issue involves the former DPM.

Comment

¶11. (C) Malaysia's judiciary has suffered from allegations of corruption and political interference since the constitutional crisis of 1988 when the PM Mahathir fired the Chief Justice and several other judges and stripped from the constitution clauses guaranteeing the independence of the judiciary. Anwar's allegations and video-taped evidence came as little surprise to the nation, but highlighted and reinforced long-held doubts concerning the lack of independence in Malaysia's judicial system. The allegations of judge fixing involve several senior UMNO leaders and supporters, and it is highly doubtful the Government will find the political will to thoroughly and honestly investigate the veracity of the claims. Set against the back-drop of Malaysia's pending elections, Anwar's release of the tape appears to have political, as well as personal, motivations. Anwar's PKR party, and the opposition in general, have focused many of their recent campaigns on anti-corruption platforms, and this story adds another anti-corruption arrow in the opposition's campaign quiver. These accusations also give weight to Anwar's claims that he was unjustly convicted in 1998 and therefore should not be prevented from contesting a seat in parliament in the next election. While such a contention will undoubtedly fail before the UMNO-controlled election commission, it reinforces Anwar's PR-influenced role as a victim of a corrupt system.

¶12. (C) Given the story's limited billing and self-censorship among the mainstream press, it is likely the story will wither on the vine. In general, only Fairuz's contract extension lies on the chopping block. Fairuz has reached the mandatory retirement age for judges of 66, but it is common practice for the Chief Justice to receive an initial six-month extension possibly followed by subsequent extensions up to the age of 68. It is commonly held among Malaysia's legal professionals that Fairuz was seeking his initial extension in October when his current contract was set to expire. Whether the axe will swing remains a question.

KEITH